IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

WP(C).No. 17935 of 2005(I)

AGAINST THE ORDER IN MC.2/05 IN
OS.63/2005 of M.C.,PARAPPANANGADI

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PETITIONER:

MOIDEENKUTTY, S/O. MUHAMMED,
RESIDING AT VELIMUKKU AMSOM,
TIRURANGADI, P.O. VELIMUKKU SOUTH.

BY ADV. SRI.S.V.BALAKRISHNA IYER

RESPONDENT:

MUHAMMED, S/O. PARAYI KUTIASSASN,
RESIDING AT VELIMUKKU AMSOM,
TIRURANGADI, P.O. VELIMUKKU SOUTH.

BY ADV. SRI.P.K.SURESH KUMAR
SRI.K.P.SUDHEER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX(WPC 17935/05)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE INTERIM REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER IN O.S.NO.53/05 OF THE MUNSIFF'S COURT, PARAPPANANGADI.

EXT.P2: TRUE COPY OF THE MEMO SUBMITTED BY THE PETITIONER.

EXT.P3: TRUE COPY OF THE STATEMENT FILED BY THE ADVOCATE COMMISSIONER.

EXT.P4: TRUE COPY OF THE ORDER OF THE MUNSIFF, PARAPPANANGADI IN M.C.2/2005 IN O.S.53/05.

PIUS C. KURIAKOSE,J.

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W.P.(C) No. 17935 of 2005

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Dated: 5th June, 2007

JUDGMENT

Ext.P1 order issued by the learned Munsiff on the basis of an interim report filed by the Advocate Commissioner is under challenge. The Commissioner filed an interim report which was to the effect that the defendant had obstructed the execution of the commission warrant. Under the impugned order the learned Munsiff found it necessary to invoke Section 340 of the Cr.P.C. and to conduct an enquiry to proceed against the unlawful act of the defendant. As rightly submitted by Mr.K.P.Sudheer, learned counsel for the respondent the petitioner-defendant does not have to be aggrieved by Ext.P1 at this stage. The learned Munsiff is yet to make a complaint in writing for the purpose of Section 340 of the Cr.P.C. Even if the learned Munsiff decides to overrule the objections which may be filed by the defendant and files a complaint, the defendant is not without a remedy. Section 340 of the Cr.P.C. itself provides with an effective remedy. I find force in the submission of Mr.Sudheer. I dispose of the Writ Petition issuing the following directions:

The learned Munsiff shall permit the petitioner to file his objections to the proposal to file complaint under Section 340 of the

Cr.P.C. and take a decision as to whether complaint should be filed only after hearing him also. The subsequent report filed by the Advocate Commissioner in response to the impugned order Ext.P1 will also be taken into account by the learned Munsiff. It is open to the learned Munsiff to take any decision on the issue as to whether complaint should be filed against the defendant irrespective of the apparent findings entered in Ext.P1 by the then learned Munsiff.

srd **PIUS C.KURIAKOSE, JUDGE**